

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

MICHAEL D. ANDERSON, #156270,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2:05-CV-837-T
	)	[WO]
	)	
DONAL CAMPBELL, et al.,	)	
	)	
Defendants.	)	

**RECOMMENDATION OF THE MAGISTRATE JUDGE**

This is a 42 U.S.C. § 1983 action in which Michael D. Anderson [“Anderson”], a state inmate, asserts that the conditions of confinement at the Bullock County Correctional Facility are violative of his constitutional rights. He names W. Moffett, a fellow inmate, as a defendant in this cause of action.

Upon review of the complaint, the court concludes that the plaintiff’s claims against inmate Moffett are due to be summarily dismissed under 28 U.S.C. § 1915(e)(2)(B)(i).<sup>1</sup>

**DISCUSSION**

Anderson complains that Moffett has served as a confidential informant for correctional officials. An essential element of a 42 U.S.C. § 1983 action is that the alleged constitutional deprivation was committed by a person acting under color of state law.

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<sup>1</sup>A prisoner who is allowed to proceed *in forma pauperis* in this court will have his complaint screened in accordance with the provisions of 28 U.S.C. § 1915(e)(2)(B). This screening procedure requires the court to dismiss a prisoner’s civil action prior to service of process if it determines that the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

*American Manufacturers Mutual Ins. Co. v. Sullivan*, 526 U.S. 40, 119 S.Ct. 977, 985, 143 L.Ed.2d 130 (1999); *Parratt v. Taylor*, 451 U.S. 527 (1981); *Willis v. University Health Services, Inc.*, 993 F.2d 837, 840 (11<sup>th</sup> Cir. 1993). To state a viable claim for relief under § 1983, a plaintiff must assert “*both* an alleged constitutional deprivation . . . *and* that ‘the party charged with the deprivation [is] a person who may fairly be said to be a state actor.’” *American Manufacturers*, 526 U.S. at 50, 119 S.Ct. at 985 (emphasis in original). The conduct about which Anderson complains was not committed by a person acting under color of state law nor did it, standing alone, deprive him of any constitutionally protect interest. Thus, the claims asserted by Anderson against Moffett are frivolous and are therefore due to be dismissed pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B)(i). *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989).<sup>2</sup>

### CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. The plaintiff’s claims against W. Moffett be dismissed with prejudice pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B)(i).
2. W. Moffett be dismissed as a defendant in this cause of action.
3. This case, with respect to the plaintiff’s claims against the remaining defendants be referred back to the undersigned for appropriate proceedings.

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<sup>2</sup>Although *Neitzke* interpreted the provisions of 28 U.S.C. § 1915(d), the predecessor to § 1915(e)(2), the analysis contained therein remains applicable to the directives of the present statute.

It is further

ORDERED that on or before October 5, 2005 the parties may file objections to this Recommendation. Any objections filed must clearly identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 21<sup>st</sup> day of September, 2005.

/s/Charles S. Coody  
CHARLES S. COODY  
CHIEF UNITED STATES MAGISTRATE JUDGE